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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-71330; File No. SR-NYSE-2013-71)

January 16, 2014

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed
Rule Change Amending NYSE Rules 13, 70.25, 107C and 1000 to Adopt a New Order Type
Called a Midpoint Passive Liquidity Order

I.   Introduction

On November 18, 2013, New York Stock Exchange LLC ("NYSE" or "Exchange") filed

with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of

the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule

change to amend: (1) NYSE Rule 13 to adopt a new order type called a Midpoint Passive

Liquidity ("MPL") Order; (2) NYSE Rule 1000 to specify that the proposed MPL Orders may

interact with Capital Commitment Schedule ("CCS") interest; (3) NYSE Rule 70.25 to permit

d-Quotes to be designated with a midpoint modifier in order to set the discretionary price to the

midpoint of the protected best bid or best offer ("PBBO"); and (4) NYSE Rule 107C to

incorporate the proposed MPL Order into the Retail Liquidity Program. The proposed rule

change was published for comment in the Federal Register on December 4, 2013.[3] The

Commission received no comment letters on the proposed rule change. This order approves the

proposed rule change.

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[1]   15 U.S.C. 78s(b)(1).

[2]   17 CFR 240.19b-4.

[3]   See Securities Exchange Act Release No. 70956 (November 27, 2013), 78 FR 72968.

II.   Description of the Proposed Rule Change

        A.   Proposed MPL Order

The Exchange proposes the MPL Order as an undisplayed limit order that would automatically execute at the mid-point of the protected best bid ("PBB") and the protected best offer ("PBO"). An MPL Order could interact with any incoming order, including another MPL Order, and could execute at prices out to four decimal places.

The proposed rule specifies certain limitations on the usage and execution of an MPL Order. First, an MPL Order would not be eligible to trade if it would trade at a price below $1.00 or if the execution price would be out to five decimal places above $1.00. Second, an MPL Order could not be designated as Good Till Cancelled. Finally, an MPL Order would not execute if the market were locked or crossed. When a market that had been locked or crossed becomes no longer locked or crossed, the Exchange would execute all eligible MPL Orders and other hidden interest eligible to execute at the midpoint of the PBBO.

With regards to order allocation, MPL Orders would be allocated on a parity-by-agent basis, consistent with NYSE Rule 72. Moreover, an MPL Order's time priority would be based on its time of entry into Exchange systems and would not reset when an MPL Order's price shifted due to changes in the PBBO.

Under the proposal, an MPL Order could also include a Minimum Triggering Volume ("MTV"), in which case the MPL Order would not be eligible to trade unless the aggregated contra-side quantity of all interest marketable at the midpoint of the PBBO were equal to or greater than the MPL Order's MTV. There would be no guaranteed trade size based on the MTV. Exchange systems would enforce an MTV restriction even if the unexecuted portion of an MPL Order with an MTV were less than the MTV.

An MPL Order that included an MTV would be rejected if it also included a Self Trade Prevention ("STP") Modifier. As proposed, STP Modifiers could be used with MPL Orders that do not include an MTV. An MPL Order with an STP Modifier, however, might be cancelled depending on the type of order on the contra-side. An MPL Order with an STP Modifier would not execute against another MPL Order or against a non-MPL Order with an STP Modifier with the same market participant identifier ("MPID").

Further, under the proposal, users could designate an MPL Order with an add-liquidity-only ("ALO") modifier ("MPL-ALO Order"). An MPL-ALO Order would not execute on arrival, even if marketable, but would remain non-displayed in the book until triggered to trade by arriving contra-side marketable interest. An incoming non-marketable MPL-ALO Order, however, could trigger a discretionary trade.[4] An MPL-ALO Order would only be eligible to trade against incoming contra-side interest and would not interact with contra-side interest resting in the book. A resting MPL-ALO Order would not be eligible to trade when arriving same-side interest triggered a trade with contra-side interest. An MPL-ALO Order would have to be at least one round lot.

An MPL Order would not be eligible for manual executions, including openings, re-openings, or closing transactions. As such, MPL Orders would not be available to be designated as Limit "On-the-Open" ("LOO") or Limit "At-the-Close" ("LOC") Orders. As fully undisplayed interest, MPL Orders would not be visible to the DMM on the Floor under any circumstances.

Additionally, MPL Orders would not be available to be entered for high-priced securities. High-priced securities are securities with a closing price – or, if the security did not trade, the

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[4]   Under the proposal, an MPL-ALO Order triggering a discretionary trade would be the "liquidity provider," and the triggered discretionary order would be the "liquidity taker."

closing bid price – on the Exchange of $10,000 or more on the previous trading day.[5] Such

securities are not available for automatic execution. Because MPL Orders are not eligible for

manual executions, MPL Orders would not be available for these high-priced securities.

B.   MPL Order Interaction with CCS Interest

The CCS is a liquidity schedule setting forth various price points at which the DMM is

willing to interact with incoming orders. CCS interest will either execute at the price at which the

full size of the order can be satisfied ("completion price") or at the next price that is one

minimum price variation ("MPV") higher (in the case of an order to sell) or lower (in the case of

an order to buy). The Exchange has stated that it believes that CCS interest cannot be designated

as an MPL Order because MPL Orders are priced at the midpoint of the PBBO and could be

priced less than one MPV above or below the completion price.

While, under the proposal, CCS interest cannot be designated as an MPL Order, CCS

interest would be eligible to interact with MPL Orders. Currently, CCS interest is eligible to

trade inside the Exchange BBO at a price representing (1) the non-displayable reserve interest of

Reserve Orders[6] or (2) the reserve interest of Floor broker agency interest files. The Exchange is

proposing to expand this list by amending NYSE Rule 1000(f)(1)(B) to include MPL Orders.

C.   Proposed MPL Order Interaction with d-Quotes

MPL Orders would not be available for d-Quotes[7] since the Exchange proposes to allow

d-Quotes with a mid-point modifier as described below. MPL Orders would not be available for

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[5]   See NYSE Rule 1000(a)(vi).

[6]   A Reserve Order means a limit order entered into Exchange systems that may contain
        displayable and non displayable interest. See NYSE Rule 13.

[7]   See NYSE Rule 70.25 (defining d-Quotes as discretionary instructions with respect to a
        Floor broker's agency interest file (e-Quotes)).

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pegging interest since pegging interest is set to track the PBB or the PBO as the PBBO changes, while MPL Orders would always be priced at the midpoint of the PBBO.

The Exchange proposes to make a midpoint modifier available for d-Quotes that would have a discretionary range up to the midpoint of the PBBO.[8]

In order to accommodate the use of a midpoint modifier, the Exchange is proposing to amend Rule 70.25(b)(ii), which states that the minimum price range for a d-Quote is the minimum price variation set forth in Exchange Rule 62. Rule 62 sets the minimum price variation at $0.01 for stocks priced greater than $1.00. However, with the midpoint modifier, a d-Quote can have a minimum price variation of $0.005. Therefore, the Exchange is proposing to amend this restriction by excepting d-Quotes with a midpoint modifier.

D.   Incorporation of MPL Orders into Retail Liquidity Program

Retail Orders or Retail Price Improvement Interest, as defined in NYSE Rule 107C, could not be designated as MPL Orders. MPL Orders, however, could interact with incoming Retail Orders.

The Exchange proposed that MPL Orders be available to interact with Retail Orders within the Retail Liquidity Program ("Retail Program"), a pilot program.[9] The Exchange

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[8]   The Exchange notes that the MPL Order and the midpoint modifier are distinct functionalities. An MPL Order would always be priced at the midpoint of the PBBO and would execute at that price. A d-Quote designated with a midpoint modifier would use its discretion to execute up to the midpoint but could execute at a less-aggressive price. As such, a d-Quote with a midpoint modifier would operate as a d-Quote that updated with changes in the PBBO to set the discretionary price range to the midpoint of the PBBO.

[9]   Under the Retail Program, retail liquidity providers ("Providers") are able to provide potential price improvement in the form of a non-displayed order that is priced better than the PBBO, called a Retail Price Improvement Order ("RPI"). Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPIs. Retail Orders may be designated as Type 1, Type 2, or Type 3. A Type 1 Retail Order interacts with available contra-side

proposes to permit all Retail Orders to interact with, in addition to available contra-side RPIs, available contra-side MPL Orders. When determining the price to execute a Retail Order, Exchange systems would consider all eligible RPIs and MPL Orders. If the only interest were MPL Orders, the Retail Order would execute against one or more MPL Orders at the midpoint of the PBBO. If the only interest were RPIs, then the execution would occur against one or more RPIs at the price level that completes the incoming order's execution. If both RPIs and MPL Orders were present on the book, then Exchange systems would determine the price level at which the incoming Retail Order could be executed in full ("clean-up price"). If the clean-up price were equal to the midpoint of the PBBO, RPIs would receive priority over MPL Orders, and Retail Orders would execute against both RPIs and MPL Orders at the midpoint. If the clean-up price were worse than the midpoint of the PBBO, the Retail Order would execute first with the MPL Orders at the midpoint of the PBBO, and any remaining quantity of the Retail Order would execute with the RPIs at the clean-up price. If the clean-up price were better than the midpoint of the PBBO, then the Retail Order would execute against the RPIs at the clean-up price and would ignore the MPL Orders.

III.   Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is

RPIs and does not interact with other available contra-side interest in Exchange systems or route to other markets. A Type 2 Retail Order interacts with available contra-side RPIs and any remaining portion of the Retail Order is executed as a Regulation NMS-compliant Immediate or Cancel Order pursuant to NYSE Rule 13. A Type 3 Retail Order interacts first with available contra-side RPIs and any remaining portion of the Retail Order is executed as an NYSE Immediate or Cancel Order pursuant to Rule 13.

[10]   In approving this proposed rule change, the Commission notes that it has considered the

consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of

a national securities exchange be designed to promote just and equitable principles of trade, to

remove impediments to and perfect the mechanism of a free and open market and a national

market system, and, in general, to protect investors and the public interest and that the rules of a

national securities exchange not be designed to permit unfair discrimination between customers,

issuers, brokers, or dealers.

The Commission finds that the proposed rule change is consistent with the requirements

of the Act. The Commission believes that the proposed MPL Order is designed to enhance order

execution opportunities on the Exchange by providing market participants with an additional

order type to interact with other trading interests. The Commission also believes that the

proposed MPL Orders is designed to allow for additional opportunities for investors to trade at

the midpoint of the PBBO, which may provide price improvement to incoming orders.

Additionally, the Commission believes that the proposed introduction of the MPL Order could

provide market participants with better control over their execution costs and with a means to

offer price improvement opportunities. The Commission notes that other exchanges offer similar

functions as the MPL Order.[12]

The Commission believes that it is appropriate for the Exchange not to allow DMMs to

enter MPL Orders through CCS, because CCS interest must observe the MPV in certain

circumstances, but MPL Orders would be tied to the midpoint of the protected NBBO and could

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proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[11]   15 U.S.C. 78f(b)(5).

[12]   See e.g., NYSE Arca Equities Rule 7.31(h)(5). See also EDGA Exchange, Inc. Rule 11.5(c)(7); BATS Exchange, Inc. Rule 11.9(c)(9); and NASDAQ Stock Market LLC Rule 4751(f)(4).

therefore have prices that do not observe the MPV. Further, the Commission believes that it is appropriate not to allow d-Quotes to enter MPL Orders, as d-Quotes would have a mid-point modifier that would provide a functionality similar to MPL Orders.[13] Finally, the Commission believes that allowing MPL Orders to interact with retail orders in the Retail Program is designed to expand the potential for price improvement to retail investors.

Therefore, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

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[13]   The Commission notes that pegging interests would also conflict with the nature of MPL Order, since pegging interests are orders that are pegged to the PBB or PBO as the PBBO changes. See NYSE Rule 13.

IV.	Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[14] that the

proposed rule change (SR-NYSE-2013-71) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated

authority.[15]

Kevin M. O'Neill
Deputy Secretary

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[14]	15 U.S.C. 78s(b)(2).

[15]	17 CFR 200.30-3(a)(12).